

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

W. A. DREW EDMONDSON, in his )  
capacity as ATTORNEY GENERAL )  
OF THE STATE OF OKLAHOMA and )  
OKLAHOMA SECRETARY OF THE )  
ENVIRONMENT C. MILES TOLBERT, )  
in his capacity as the )  
TRUSTEE FOR NATURAL RESOURCES )  
FOR THE STATE OF OKLAHOMA, )

Plaintiff, )

vs. )

TYSON FOODS, INC., et al, )

Defendants. )

4:05-CV-00329-TCK-SAJ

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THE VIDEOTAPED DEPOSITION OF  
SCOTT THOMPSON, produced as a witness on behalf of  
the Defendants in the above styled and numbered  
cause, taken on the 4th day of January, 2008, in the  
City of Oklahoma City, County of Oklahoma, State of  
Oklahoma, before me, Lisa A. Steinmeyer, a Certified  
Shorthand Reporter, duly certified under and by  
virtue of the laws of the State of Oklahoma.

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**TULSA FREELANCE REPORTERS**  
**918-587-2878**

A P P E A R A N C E S

FOR THE PLAINTIFFS: Mr. Daniel Lennington  
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FOR TYSON FOODS: Mr. Stephen Jantzen  
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FOR CARGILL: Mr. John Tucker  
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Tulsa, OK 74103

FOR SIMMONS FOODS: Mr. Bruce Freeman  
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(Via phone)

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1 FOR WILLOW BROOK: Mr. David Brown  
2 Attorney at Law  
3 314 East High Street  
4 Jefferson City, MO 65109  
(Via phone)

5 FOR CAL-MAINE FOODS: Mr. Robert Redemann  
6 Attorney at Law  
7 1437 South Boulder  
8 Tulsa, OK 74119  
(Via phone)

9 FOR ODEQ: Mr. Sonny Johnson  
10 Attorney at Law  
11 707 North Robinson  
12 7th Floor  
13 Oklahoma City, OK 73102  
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1 disposal?

2 A Yes.

3 Q Title 27A, is that the Oklahoma statute that  
4 controls the environment and natural resources?

5 A I believe so. 10:28AM

6 Q I don't want to cut you short, so let's look  
7 at a copy of it. Is that the right number?

8 A I think so, but I rely on other people to get  
9 citations right.

10 Q I understand. That's why you have the lawyer 10:28AM  
11 at your right hand, isn't it?

12 A Yep.

13 Q That's what he's there for. Two lawyers  
14 actually today. One of the things that's included  
15 in this statute has to do with -- includes a section 10:28AM  
16 which has several definitions; is that correct?

17 A I'm sure it does.

18 Q And would it be correct to say that one of  
19 those definitions is a definition for solid waste?

20 A Yes. 10:29AM

21 Q Has your department ever defined poultry  
22 litter to be solid waste?

23 A I don't know if we've ever made an official  
24 determination, but if somebody wanted to throw it  
25 away, to dispose of it, then I think it would be 10:29AM

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1 solid waste.

2 Q Have you ever considered poultry litter to be  
3 solid waste, your department?

4 A I haven't tried to think about it too much. I  
5 haven't had that issue come up directly. 10:29AM

6 Q Would it be correct to say that up to this  
7 point that your division has not considered poultry  
8 litter to be solid waste?

9 A I would say that so far --

10 MR. LENNINGTON: I object to the form. I'm 10:29AM  
11 not sure what department considered means. Go ahead  
12 and answer, if you know.

13 A Ask that question again.

14 Q Let me rephrase it and see if I can make  
15 everybody happy. Has the land protection division, 10:30AM  
16 either under that name or its previous name, ever  
17 treated poultry litter as solid waste?

18 MR. LENNINGTON: Objection to form. Go  
19 ahead and answer.

20 A I don't recall ever having taken action 10:30AM  
21 involving poultry litter as a waste.

22 Q Do you recall ever having identified poultry  
23 litter as a solid waste?

24 MR. LENNINGTON: Objection to form. Go  
25 ahead and answer. 10:30AM

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1 Q You being the department; you are speaking for  
2 the department.

3 A Have we specifically identified it as a solid  
4 waste in an actual case? No, not that I recall.

5 Q Is agricultural waste in general something 10:30AM  
6 that's handled by your department or is it handled  
7 by another state agency?

8 A I would say in general, no.

9 Q In general, no, it is not handled by your land  
10 protection division? 10:30AM

11 A Right.

12 Q Normally it is handled by what department?

13 A Agriculture department.

14 Q The Oklahoma Department of Agriculture?

15 A Right, or now it's something else, food and 10:31AM  
16 agriculture.

17 Q ODAFF?

18 A Yeah.

19 Q You call it ODAFF now. You say generally. In  
20 what respects would that word generally mean that 10:31AM  
21 the land protection division of ODEQ would be  
22 involved with agricultural waste?

23 A Well, if somebody -- if somebody wanted to  
24 dispose of a bunch of material and came to us to  
25 dispose of it, then it would be -- have to be 10:31AM

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1 treated as a solid waste or a hazardous waste. If  
2 we got a complaint that something was digging a hole  
3 and burying something and we went and found out that  
4 it had an agricultural source, we might check with  
5 the Ag Department to see if it was something that  
6 they'd permitted and if not, then we might take  
7 enforcement action.

10:31AM

8 Q Have either of those things ever happened?

9 A Not that I recall.

10 Q And how long have you been in charge of your  
11 department?

10:31AM

12 A About three years probably, four.

13 Q And how long have you been in this department?

14 A When you say department, I'm assuming you mean  
15 division.

10:32AM

16 Q Yes, division.

17 A I'm not running the agency.

18 Q I keep saying department. I mean division. I  
19 didn't mean to promote just quite yet.

20 A Okay, and what was the last question?

10:32AM

21 Q How long have you been in this division?

22 A Since '93 when the agency was formed.

23 Q So since 1993 to the present time?

24 A I was functioning in this division in the  
25 '80's, since '84 for the Health Department before

10:32AM

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1 the DEQ was formed, so --

2 Q Taking you back from '84 to the present time,  
3 have you ever known this division to be involved in  
4 either of those two ways you indicated that this  
5 division might be involved at some future time?

10:32AM

6 A We've responded to legal disposal stuff.  
7 Whether there's ever been any agricultural stuff, I  
8 don't recall for sure. Some of that might have been  
9 handled by other folks in the division, but I don't  
10 recall a specific incident.

10:33AM

11 Q Or a specific instance involving agriculture?

12 A Not for waste. We did work with the  
13 Department of Agriculture regarding pesticides that  
14 could still be applied in the manner they were meant  
15 to be applied. I did work with Ag on some  
16 investigations of pesticide applicators as well.

10:33AM

17 Q Does your division have the ability to act if  
18 it determines that there is something in the  
19 environment that's causing a danger to human health  
20 or the environment?

10:33AM

21 A Yes.

22 Q Would it be correct to say that in fact your  
23 division has a duty to act if you perceive a  
24 problem?

25 A Yes, depending on the degree of the problem.

10:34AM

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1 | **A** It all depends on a case-by-case situation.

2 Q Does it require a citizen complaint for you to  
3 find out about it?

4       **A**       Not always, but it's the most common way for  
5       us to find out about something like that.

6 Q What happens when you determine that there's  
7 something like that that has occurred; what does  
8 your agency do, your division?

9       **A**       We would initiate an investigation.

10 Q And would the investigation perhaps lead to a  
11 notice of violation?

12	<b>A</b>	Perhaps, yeah.
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13 Q Do you have the jurisdiction to do that?

14	<b>A</b>	Yes.
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15 Q To your knowledge has your division ever  
16 issued any notice of violation to any farmer for  
17 anything having to do with poultry litter or other  
18 agricultural waste?

19 | **A** Not that I recall for those types of wastes.

20 Q We talked about the fact earlier that your  
21 division has the authority to issue notices of  
22 violations. Has your authority in fact issued  
23 notices of violations for various things?

24 | **A** Yeah.

25	Q	How many would you say have been issued during
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1 The time is 11:21 a.m.

2 Q Mr. Thompson, I asked you earlier if the  
3 department had issued any notices of violation  
4 pertaining to poultry litter and you indicated that  
5 none that you recall. Do you recall any complaints 11:22AM  
6 being received by your division with respect to  
7 poultry litter because of poultry litter?

8 A Not that I recall.

9 Q Do you recall any complaints being received by  
10 your division with respect to bacteria? 11:22AM

11 A Yes.

12 Q In what context did you receive complaints  
13 about bacteria?

14 A Some folks up at Tar Creek were complaining  
15 about bacterial levels in the Spring River. 11:22AM

16 Q What did you do when you received that  
17 complaint?

18 A I believe I passed it on to water quality and  
19 ECLS.

20 Q Water quality is another division here at the 11:22AM  
21 ODEQ?

22 A Yes.

23 Q What would you expect that water quality would  
24 do with it?

25 A I don't know. Evaluate it, take samples, 11:22AM

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1 figure out what's going on.

2 Q And if they, after their investigation, found  
3 a reason to do so, would you expect that they would  
4 file a complaint or take some other action?

5 A Yes. 11:23AM

6 Q Is it their duty, both jurisdiction and duty  
7 to do so?

8 MR. LENNINGTON: Objection, foundation.

9 A I think there's some issues with that  
10 situation as the water comes in from Baxter Springs, 11:23AM  
11 Kansas, so I'm not sure how that's sorted out.

12 Q Well, insofar as water in Oklahoma is  
13 concerned, if bacterial complaints come in and they  
14 go to that division of the ODEQ, is it that  
15 division's responsibility to investigate that 11:23AM  
16 complaint?

17 MR. LENNINGTON: Objection, form.

18 A In general, yes.

19 Q And if that investigation discloses that there  
20 is a threat to human health or the environment, 11:23AM  
21 would you expect that division to take some kind of  
22 action?

23 A I suppose so. You probably -- I suppose so.  
24 I don't know. Depends on the exact circumstances  
25 and the nature of the situation. 11:24AM

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1 Q And is that the only complaint that you recall  
2 receiving with regard to bacteria in your division?

3 A Yes.

4 Q Would you agree that the ODEQ has never  
5 regulated poultry litter as solid waste? 11:24AM

6 A I don't know.

7 Q To your knowledge has the ODEQ ever regulated  
8 poultry litter as solid waste?

9 A I don't know. I mean I don't -- I haven't  
10 dealt with a case involving poultry litter directly 11:24AM  
11 as solid waste.

12 Q To your knowledge has the Oklahoma Department  
13 of Environmental Quality ever dealt with poultry  
14 litter as solid waste?

15 A Don't know. 11:24AM

16 Q Well, I know that you don't know, but do you  
17 know of any time when they have?

18 A No.

19 Q Okay. Did the EPA, Environmental Protection  
20 Agency, delegate enforcement of solid waste issues 11:25AM  
21 to states?

22 A No.

23 Q What was delegated to the states?

24 A Well, it's the states -- EPA has not taken --  
25 the EPA does not actually regulate municipal solid 11:25AM

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1 question? I'm not sure I could ask it twice.

2 (Whereupon, the court reporter read  
3 back the previous question.)

4 A We would probably refer it to somebody else,  
5 to the Ag Department. 11:27AM

6 Q Has your division ever made any determination  
7 that poultry litter is an imminent threat to the  
8 environment?

9 A I don't think so.

10 Q Do you know whether the Oklahoma Department of 11:27AM  
11 Environmental Quality has ever made such a  
12 declaration?

13 A Not that I know of.

14 Q You told us earlier that the only way you  
15 would be involved with poultry litter, would have 11:28AM  
16 been involved would be if someone called and said  
17 that somebody is digging a hole and trying to  
18 dispose of a whole lot of it in the hole; do you  
19 recall that?

20 A Or if somebody wanted -- called us about legal 11:28AM  
21 disposal, we would allow them to dispose of it in a  
22 landfill. That could have occurred. I don't have a  
23 clue.

24 Q You told me earlier that you had worked with a  
25 professor at the university of -- Oklahoma State 11:28AM

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1 pesticides but I don't -- other than that, I don't  
2 recall anything in my --

3 Q Okay, okay. Are you aware of EPA ever  
4 investigating under RCRA the land application of  
5 poultry litter in the Illinois River watershed?

11:49AM

6 A Of the EPA?

7 Q Yes.

8 A I don't know.

9 Q So you're not aware?

10 A I'm not aware of anything specific that  
11 they've done.

11:49AM

12 Q Okay, and I'm asking about land application of  
13 poultry litter. Okay?

14 A I'm not aware. I don't know.

15 Q Do you understand what I mean by land  
16 application?

11:50AM

17 A I think so.

18 Q Okay. Same question then as to DEQ. Has DEQ  
19 ever investigated under RCRA the land application of  
20 poultry litter in the Illinois River watershed?

11:50AM

21 A Not that I know of, no.

22 Q Okay. Has DEQ ever drafted any rules or  
23 promulgated any administrative rules under RCRA  
24 relating to the land application of poultry litter  
25 in the state of Oklahoma?

11:50AM

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1       **A**       No.

2       **Q**       You would agree with me, would you not, that  
3       ODEQ generally in the land protection division  
4       specifically has authority to, and indeed a duty, to  
5       investigate violations of RCRA in the Illinois River       11:50AM  
6       watershed; is that correct?

7               MR. LENNINGTON: Objection, form.

8       **A**       Anywhere in Oklahoma.

9       **Q**       Right. It's DEQ's responsibility and duty to  
10      investigate violations of RCRA in the state of       11:51AM  
11      Oklahoma?

12      **A**       Yes.

13      **Q**       Okay. Does any other agency in the state of  
14      Oklahoma have authority under RCRA to investigate  
15      violations of RCRA in the state of Oklahoma?       11:51AM

16              MR. LENNINGTON: Objection, foundation.

17      **A**       I don't think so.

18      **Q**       And I'm saying other than EPA.

19      **A**       Any other state agency?

20      **Q**       Yes, sir.       11:51AM

21      **A**       I don't think so, no.

22      **Q**       So the Department of Mines doesn't have RCRA  
23      jurisdiction --

24      **A**       No, not as far as I know.

25      **Q**       -- as an example?       11:51AM

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1       **A**       I don't read their rules.

2       **Q**       Okay. So far as you're concerned and so far  
3 as you know, DEQ is the only state agency that has  
4 RCRA authority in the state of Oklahoma?

5               MR. LENNINGTON: Objection, form. 11:51AM

6       **A**       Yes.

7       **Q**       Under DEQ's RCRA authority, the department has  
8 the ability or the authority to order businesses or  
9 operations to cease engaging in certain activities;  
10 is that correct? 11:52AM

11       **A**       You said under RCRA authority?

12       **Q**       Under RCRA?

13       **A**       Yes.

14       **Q**       To your knowledge has DEQ ever ordered any  
15 operation or business in the state of Oklahoma to 11:53AM  
16 cease or desist from the land application of poultry  
17 litter?

18       **A**       No.

19       **Q**       What would be the implications of the land  
20 application of poultry litter being regulated under 11:53AM  
21 RCRA; in other words, if poultry litter were deemed  
22 to be something that was regulated by RCRA, and I  
23 think that it's not, but that's an issue, what would  
24 be the implications of that?

25       **A**       I don't know. I would just wait on the case 11:53AM

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1 a permitting switch.

2 Q Why is there a tiered system?

3 A I don't know.

4 Q Has the -- I think earlier Mr. Tucker asked

5 you some questions about the dividing line on 11:56AM

6 regulatory jurisdiction over certain activities in

7 the state of Oklahoma and particularly those that

8 are at issue in this case and that being, you know,

9 does DEQ have authority over the land application of

10 poultry litter or poultry litter generally, and I 11:56AM

11 believe, correct me if I'm wrong, but your answer

12 was that ODAFF generally regulates those activities;

13 is that correct?

14 A That's my understanding.

15 Q Has ODAFF ever requested that DEQ or your 11:56AM

16 department or your division within DEQ investigate

17 poultry litter or the land application of poultry

18 litter under RCRA?

19 A I don't think that we've ever had that request

20 in my division. 11:56AM

21 Q From the Department of Agriculture?

22 A Right.

23 Q Have you ever had any discussions with the

24 Department of Agriculture about whether or not

25 poultry litter should be regulated under RCRA? 11:57AM

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1       **A**       No.

2       **Q**       A couple of years ago the Oklahoma Attorney  
3       General's office sent out a citizen suit notice that  
4       led up to this lawsuit. Are you familiar with that  
5       not in any kind of detail? 11:57AM

6       **A**       No.

7       **Q**       This was a citizen suit notice under RCRA.  
8       Are you familiar with that?

9       **A**       I probably saw something at the time but --

10      **Q**       Okay. If a citizen suit notice -- let me ask 11:57AM  
11      you this: Are you familiar with what a citizen suit  
12      is?

13      **A**       Sort of.

14      **Q**       Yeah. Can you describe to me what your  
15      understanding is of a citizen suit? 11:57AM

16      **A**       Well, primarily I -- I really probably am not  
17      in detail familiar with it, but I know there's some  
18      provisions under CERCLA and such or NPS that  
19      citizens can sue.

20      **Q**       Well, let me tell you what my understanding is 11:58AM  
21      and we can have a little platform to talk. My  
22      understanding is under RCRA there's a provision that  
23      citizens, for example, in the state of Oklahoma can  
24      send a notice to the agency that has authority to  
25      enforce RCRA, be that EPA or DEQ in this state, 11:58AM

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1 saying they think there's a violation of RCRA and  
2 that some action should be taken, and there's a  
3 window that if no action is taken, then a citizen  
4 suit can be filed in federal court to enforce RCRA.

5 Does that sound familiar?

11:58AM

6 A Sort of.

7 Q Okay. So a couple of years ago a citizen suit  
8 notice was sent, transmitted by the attorney  
9 general's office to DEQ and other agencies alleging  
10 violations of RCRA. Are you familiar with that?

11:58AM

11 A I don't really recall it specifically.

12 Q Do you recall ever seeing that citizen suit  
13 notice?

14 A I recall when this first started that there  
15 was some discussion of that or maybe I read a paper  
16 or maybe I read a document. I don't really -- I  
17 don't recall.

11:59AM

18 Q Have you ever received, you, your division,  
19 DEQ ever received a citizen suit notice under RCRA  
20 before?

11:59AM

21 A I don't know.

22 Q Okay, okay. Is that something that you would  
23 or should see as the director of the land protection  
24 division?

25 A Probably, yes.

11:59AM

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1 Q And what would you -- under any circumstance  
2 when you would receive a citizen suit notice, what  
3 action would DEQ or your division take if there were  
4 alleged to be violations of RCRA?

5 A Well, typically we would initiate some sort of 11:59AM  
6 investigation, evaluation of the complaint  
7 situation, specifics of it, and then make some  
8 determination on what to do from that point.

9 Q Whether or not to undertake enforcement action  
10 under RCRA? 12:00PM

11 A Correct.

12 Q In this case did your division or did DEQ  
13 undertake such an investigation based upon the  
14 allegations in the attorney general's citizen suit  
15 notice to DEQ? 12:00PM

16 A In my division?

17 Q Yes.

18 A Has not.

19 Q Did DEQ?

20 A I don't know. 12:00PM

21 Q But you said earlier that your division is the  
22 only division within DEQ that has any RCRA  
23 responsibility; is that correct?

24 A Correct.

25 Q So it would be you and your staff that would 12:00PM

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1 undertake an investigation of a citizen suit notice;  
2 correct?

3 A I suppose formally, yes.

4 Q Under RCRA, of course?

5 A Yeah. 12:00PM

6 Q And in this case what you're telling me, I  
7 believe, is that your division did not undertake any  
8 investigation under RCRA based upon the receipt of  
9 the citizen suit notice from the State of Oklahoma  
10 or the attorney general's notice; is that correct? 12:00PM

11 A Yes.

12 Q You agree with me that no action was taken;  
13 correct?

14 A Yes.

15 MR. JANTZEN: I think I'll pass the 12:01PM  
16 witness.

17 MR. McDANIEL: I have a couple of questions  
18 which shouldn't be interpreted as two.

19 REDIRECT EXAMINATION

20 BY MR. McDANIEL: 12:01PM

21 Q He handed me the microphone down here, Mr.  
22 Thompson, because I'm generally so offensive, they  
23 try to keep me at the other end of the room. My  
24 name is Scott McDaniel. My client in this matter is  
25 Peterson Farms, Inc. I do have a few questions. 12:01PM

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1 or warnings in the event a condition exists within  
2 the state that presents a public health concern?

3 A Yes, in some cases.

4 Q Has to your knowledge has the Department of  
5 Environmental Quality issued any type of public  
6 health warning with regard to the utilization of  
7 poultry litter in agriculture?

12:26PM

8 A No.

9 Q Has the department been asked to do that by  
10 anyone to your knowledge?

12:26PM

11 A Not that I know of.

12 Q Sir, has your division under its RCRA  
13 authority made any requests to the Oklahoma  
14 Department of Agriculture, Food & Forestry, any  
15 requests for information regarding poultry litter  
16 management practices in the state of Oklahoma?

12:27PM

17 A Not that I know of.

18 Q I gather from the questions throughout the  
19 morning poultry litter is just simply not on your  
20 radar screen; is that a fair statement?

12:27PM

21 A Not at the moment.

22 Q All right. Sir, are you aware of anyone at  
23 the Oklahoma Department of Environmental Quality  
24 that was involved in the decision to file this  
25 lawsuit?

12:27PM

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